

## TITLE 43 OCCUPATIONS AND PROFESSIONS

### CHAPTER 43-01 ABSTRACTERS

**43-01-01. Board - Definition.** Whenever the word "board" is used in this chapter it means the abstracters' board of examiners.

**43-01-02. Abstracters' board of examiners - Appointment - Term of office - Vacancies.** The abstracters' board of examiners shall consist of three members each of whom must be appointed by the governor for a term of six years, with the terms of office so arranged that one term and only one expires on March thirty-first of every odd-numbered year. One member of the board must be an abstracter. Each member of the board shall qualify by taking the oath required of civil officers and holds office until that member's successor is appointed and qualified. Any vacancy on the board must be filled by appointment by the governor for the unexpired term.

**43-01-03. Officers of board - Power to administer oaths.** At the first meeting of the board subsequent to the thirty-first day of March in each odd-numbered year, the members of the board shall elect a president and secretary-treasurer. The president must be a member of the board. The secretary-treasurer may not be a member of the board but must be a practical abstracter engaged in the business of making abstracts of title to real estate. The president and secretary-treasurer may administer oaths.

**43-01-04. Compensation.** A member of the board is entitled to receive compensation in an amount fixed by the board for each day or portion of a day the member is actually engaged in the performance of official duties and such mileage reimbursement as is provided for in section 54-06-09. In addition thereto, the member is entitled to reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

**43-01-05. Duties of board - Power to make rules - Seal.** The board shall carry out the purposes and enforce the provisions of this chapter and shall make such rules and regulations as are necessary for the performance of its duties. The board shall have a seal.

**43-01-06. Biennial report.** The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

**43-01-07. Moneys of board - How disbursed.** Moneys collected for the board under this chapter must be kept by the secretary-treasurer and disbursed only on warrants signed by the president and the secretary-treasurer. All expenses incident to the examinations required under this chapter, the expenses of preparing and issuing certificates and licenses, the reimbursement of board members' expenses, and stationery, printing, clerk hire, and incidental office expenses must be paid by the board from the fees collected by it, and no expense incurred under this chapter may be a charge against the funds of this state. No part of the funds administered by the board revert to the general fund of this state. At the end of the person's term, the secretary-treasurer shall account to the person's successor for any moneys remaining in the person's hands.

**43-01-08. Records of board.** The board shall keep a register wherein it shall enter the name of each applicant for registration under the provisions of this chapter, with the applicant's place of residence and such other information as may be appropriate, and the board shall cause to be entered therein the action taken upon the application and the date upon which a certificate of registration was issued or the application denied.

**43-01-09. Requirements of abstracter of title - Records - Certificate of registration bond or liability policy.** Before any person, firm, corporation, or limited liability company may engage in the business of making and compiling abstracts of title to real estate within this state, the person or it shall:

1. Have for use in such business a complete set of abstract books or records of all instruments of record in the office of the recorder in and for the county in which the person or it is engaged in business, or shall have been engaged in good faith in the preparation of such books or records for not less than six months;
2. Obtain a certificate of authority as is required by this chapter;
3. File the bond or abstracter's liability policy required under section 43-01-11; and
4. Have in charge of such business a registered abstracter, as defined by this chapter.

**43-01-10. Certificate of registration - Application - Examination - Fee.** Any person, firm, corporation, or limited liability company desiring to obtain a certificate of authority under subsection 2 of section 43-01-09 shall make application therefor to the board and shall pay to the secretary-treasurer thereof an examination fee not exceeding the actual cost of the applicant's examination by the board. The application must be upon a form prepared by the board and must contain such information as may be desired by it. The board shall fix the date and place for the examination of the applicant and shall give the applicant notice thereof by mail. The applicant shall appear at the time and place specified in the notice, and the board shall examine the applicant under such rules as it may prescribe. If the application is made by a firm, corporation, or limited liability company, one of the members, officers, or managers thereof shall take the examination.

1. Registered abstracters, within the meaning of the chapter, shall comprise all persons who shall, upon the passage of this chapter, be in charge, either individually or jointly with other persons, of the abstract office which is the holder of a valid and subsisting certificate of authority as provided by this chapter and who shall obtain a certificate of registration as hereinafter provided, or persons who shall be granted certificates of registration by the board after passage of this chapter.
2. Any person desiring to obtain a certificate of registration under this chapter shall make application to the board and shall pay to the secretary-treasurer of the board an examination fee fixed by the board not exceeding one hundred dollars except as hereinafter provided. Such application must be upon a form to be prepared by the board and to contain such information as may be desired by it. Thereupon the board shall fix a date and place for the examination of such applicant, of which notice must be given to applicant by mail, who shall appear at such meeting. Whereupon the board shall proceed to examine such applicant or applicants under such rules as may be adopted by the board.
3. Any person, who, upon the effective date of this chapter, is in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority provided by subsection 2 of section 43-01-09 and who shall make application to the board prior to the expiration of said certificate of authority shall upon the payment of a fee fixed by the board not exceeding one hundred dollars be issued a certificate of registration, without examination, under such rules as may be provided by said board.
4. The certificate of registration issued by the board must recite that the holder has complied with this chapter relating to examination or otherwise, and entitles the holder of the certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority under this chapter. Certificates of registration must be issued upon the payment of a fee fixed by the board not exceeding one hundred dollars and are valid for one year from the date of issuance

but must be renewed annually by the board upon application within thirty days before the expiration of the registration upon a payment of a fee fixed by the board not exceeding one hundred dollars to the secretary-treasurer of the board. The board may issue temporary certificates of registration in its discretion. After August 1, 1993, an applicant for renewal of a registration shall include with the application a report of any continuing education courses attended by the applicant during the previous year. The board shall adopt rules to establish and administer continuing education requirements.

5. Said board shall keep a register, wherein it shall enter the names of all applications for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the dates upon which certificates of registration and certificates of authority are issued.

**43-01-10.1. Conviction not bar to certification - Exceptions.** Conviction of an offense shall not disqualify a person, firm, corporation, or limited liability company from certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as an abstractor or that, following conviction of an offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**43-01-11. Bonds or liability policy - Deductible policy permitted.** Before a certificate of authority may be issued, the applicant therefor shall file with the secretary-treasurer of the board a surety bond in favor of the state, or an abstractor's liability policy to be approved by the board as to form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state, in a penal sum or limit of liability equal to ten thousand dollars for each ten thousand inhabitants, or major fraction thereof, residing in the county in which the applicant's office is maintained, as shown by the last official federal or state census preceding the filing of the bond or abstractor's liability policy. Such bond, or abstractor's liability policy, however, may not be less than one hundred thousand dollars. The bond or liability policy must be conditioned for the payment by the abstractor of any liability imposed upon the abstractor by law for damages arising from any claim against the abstractor that may be sustained by or that accrues to any person by reason or on account of any negligent act, error, or omission in any abstract or certificate of title, or continuation thereof, made and issued by the abstractor. All surety bonds, liability policies, and evidence of annual renewal of the bonds and policies must be filed with the secretary-treasurer of the board. All abstractors' liability policies must be endorsed to provide that cancellation cannot be effected by either the abstractor or the insurance company without ten days' written notice to the abstractors' board of examiners. It is permissible under this section to file an abstractor's liability policy in the deductible form, provided that the deductible provision may not exceed ten thousand dollars.

**43-01-12. Board may require additional security on abstractor's bond.** The board, upon thirty days' notice, may require any person, firm, corporation, or limited liability company holding a certificate of authority to furnish additional bond or additional abstractor's liability coverage as to the board seems proper, and to show cause why any bond or abstractors' liability policy filed with it should not be held and declared insufficient and invalid.

**43-01-13. Seal of abstractor.** Any person, firm, corporation, or limited liability company furnishing abstracts of title to real property under the provisions of this chapter shall have a seal which has stamped on it the name and location of such person, firm, corporation, or limited liability company. An impression of the seal shall be deposited with the secretary-treasurer of the board before the certificate of registration is issued. The seal shall be affixed to every abstract or certificate of title issued by such person, firm, corporation, or limited liability company.

**43-01-14. Certification of authority - Fee - Renewal.** A certificate of authority must be issued to an applicant who successfully passes the examination of the board and complies with the other provisions of this chapter, upon the payment of the registration fee fixed by the board not exceeding one hundred dollars, which must be in addition to the examination fee. A certificate is valid for five years after the date thereof. A certificate must be renewed by the board

upon application, made within thirty days prior to the expiration date, accompanied by payment of a fee fixed by the board not exceeding one hundred dollars and an affidavit that the applicant has for use in the applicant's business a complete set of abstract books or records of all instruments of record in the office of the recorder in and for the county in which the applicant has the applicant's place of business or has been engaged in good faith in the preparation of such books or records for not less than six months.

**43-01-15. Authority and duty of abstractor under certificate.** The certificate of authority shall authorize the person, firm, corporation, or limited liability company named therein to engage in and carry on the business of an abstractor of real estate titles in the county in which the abstractor's place of business is located and for that purpose to have access during ordinary office hours to the offices of any county or of the state and to make such memoranda or notations from the records thereof as may be necessary for the purpose of making such abstracts of title. Any person, firm, corporation, or limited liability company holding a certificate shall furnish or continue an abstract of title to any tract of land in the county, when requested to do so, on payment of the fees provided in this chapter.

**43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request - Zoning and subdivision exclusion upon request.** An abstractor shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstractor shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstractor may charge a fee of one dollar and fifty cents, and no more. When requested to do so, an abstractor shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted. Further, when requested to do so, an abstractor shall omit zoning and subdivision ordinances but shall note and exclude them from the abstract of title. An abstractor may charge a per entry fee under section 43-01-18 for each omitted zoning and subdivision ordinance.

**43-01-16. Cancellation or denial of certificate - Discipline.** The board, after receiving a written and signed complaint alleging a violation of any ground for discipline under this section and upon thirty days' notice, may require any person, firm, corporation, or limited liability company holding a certificate of authority, or any person holding a certificate as a registered abstractor, to show cause why the same should not be canceled or other disciplinary measures taken. The board may deny an application for a certificate of authority or a certificate of registration for any reason that a certificate of authority or a certificate of registration may be canceled or disciplinary measures taken. A certificate of authority or certificate of registration may be canceled or disciplinary measures taken, however, only for one or more of the following reasons:

1. Violation of the provisions of this chapter or the board's administrative rules by the holder.
2. If the holder thereof has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as an abstractor, or if, following conviction of an offense, the board finds the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
3. A finding by the board that the holder is guilty of habitual carelessness, inattention to business or unreasonable timeliness of service, or intoxication or the use of drugs to

such an extent as to incapacitate the holder for business, including not preparing an abstract as requested under section 43-01-15.1.

4. A finding by the board that the holder is guilty of fraudulent practices.
5. A certificate of authority may be canceled, or other disciplinary measures taken, upon the failure of the holder thereof to provide additional security as provided by section 43-01-12, or upon failure to file an abstracter's liability policy in lieu of any canceled policy, before such cancellation becomes effective, or a surety bond in place thereof.

The board may inspect an abstracter's records to determine compliance with this chapter or rules adopted under this chapter. The board may adopt rules under chapter 28-32 addressing discipline of abstracters, including establishing standards for timeliness of service based on a presumed standard turnaround time of three weeks or less. If the certificate of authority is held by a firm, corporation, or limited liability company, the provisions of this section shall be applicable to the members, officers, or managers thereof. Disciplinary measures that the board may take include canceling or suspending a certificate of authority or certificate of registration, requiring additional education, establishing a mentor or monitor, restricting practice parameters, or imposing a monetary penalty of no greater than five hundred dollars for each violation. In addition, an individual or organization found in violation of the requirements of this section may be assessed costs, including attorney's fees, by the board. An entity whose certificate of authority has been canceled or suspended must surrender all customer abstracts and pending orders to the board immediately upon being notified of the cancellation or suspension. The board shall take reasonable measures to contact the customers.

**43-01-17. Appeal from cancellation of certificate.** Upon the denial of an application for a certificate of authority, or an applicant for a certificate of registered abstracter, or upon the cancellation of either a certificate of authority or a certificate of registered abstracter, the applicant or the holder thereof may appeal from the decision of the board to the district court. Such appeal must be taken by the service upon the secretary-treasurer of the board, within thirty days after notice of the decision has been served, of a notice of appeal and an appeal bond in the sum of two hundred fifty dollars. The appeal must come on for hearing at the next regular term of the district court in the county in which the applicant or certificate holder has a place of business or residence within the state of North Dakota.

**43-01-18. Fees chargeable by abstracter.** An abstracter may charge no more than the following fees for making and certifying to an abstract:

1. For each entry on an abstract or continuation thereof, six dollars.
2. For a complete certification covering the records of the several county offices, seventy-five dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of nine dollars, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of nine dollars, for the premises in each additional block in excess of one, may be charged.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanics' liens and mechanics' lien notices, three dollars and fees charged to the abstracter by governmental agencies or governmental entities.
6. For all miscellaneous instruments, two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.

7. The fees as may be fixed by special statute.

**43-01-19. County officers may certify abstracts.** This chapter does not prevent the recorder, county treasurer, or clerk of court from certifying to abstracts of title to lands from the records of their respective offices. Each officer, however, is liable on the officer's official bond for the faithful performance of all acts performed by the officer as the abstracter. If the officer certifying the abstract is the clerk of court, the clerk shall charge and collect a fee as prescribed in section 27-05.2-03.

**43-01-20. Penalty.** Any person making, compiling, or certifying to an abstract of title to real property in this state without first having complied with the provisions of this chapter is guilty of a class B misdemeanor.

**43-01-21. Abstract prima facie evidence of title - When recorded.** If the records of deeds, mortgages, liens, judgments, and instruments of like nature in any county have been lost or destroyed, the abstract prepared by a regularly bonded abstracter of said county must be deemed prima facie evidence of title, and such regularly certified abstract of title may be recorded as other instruments are recorded.

**43-01-22. Abstract prepared by regularly bonded abstracter is evidence.** Abstracts prepared by an official abstracter must be received as evidence in all courts and are prima facie evidence in all courts and places of the facts stated therein.

**43-01-23. Temporary authority of an abstracter to act in an additional county.**

1. If it appears to the board that there is no abstracter authorized to engage in and carry on the business of an abstracter of real estate titles in a county or that there is an authorized abstracter in a county who is unable to perform the duties of an abstracter due to death, disability, a disaster or emergency, or disciplinary action, the board may authorize an individual or organization having a certificate of authority and certificate of registration to operate in another county to operate in the county having no abstracter through the issuance of a temporary certificate of authority. The board may not charge an abstracter for the temporary certificate of authority. The board may require additional security than provided under section 43-01-11. The abstracter operating under the temporary certificate of authority is not required to have a complete set of abstract books or records of all instruments of record in the office of the recorder in and for the county in which the abstracter is temporarily engaged in business, nor need the abstracter have been engaged in the preparation of such books or records. The temporary certificate of authority may not exceed such time as the board has determined an abstracter having a regular certificate of authority and certificate of registration is able to engage in and carry on the business of an abstracter of real estate titles in the county, but the abstracter holding the temporary certificate of authority may complete any work already engaged. The abstracter having a temporary certificate of authority may seek to operate in the county on a regular basis through compliance with all statutory requirements.
2. The board may establish a fund to provide for additional expenses of an abstracter operating under a temporary certificate of authority. The fund may be paid for by an additional fee fixed by the board of no more than fifty dollars per year for each certificate of registration. The fund may not exceed five thousand dollars. The board may pay the expenses, including mileage, meals, and lodging, of an abstracter operating under a temporary certificate of authority at the rates established for state employees on official business.